

REMARKS

Claims 2, 3, 5, 6 and 9-13 remain pending in this application. Claim 11 has been amended to clarify the nature of the claimed intervertebral joint prosthesis. Support for this amendment can be found in at least at page 7, lines 9 and 10, and FIG. 23 of the specification. No new matter has been added.

Claims 2, 3, 6, 9 and 11 stand rejected as anticipated by Cottle (US 5,888,227), while claims 5, 10, 12 and 13 stand rejected under 35 USC 103(a) on Cottle by itself or in view of secondary references. These rejections are respectfully traversed.

The claims require an intervertebral joint prosthesis. In contrast, the inter-vertebral implant of Cottle is a cage fusion implant which is configured to fuse vertebrae. A joint prosthesis is fundamentally different than a fusion implant in that a joint prosthesis preserves motion while a fusion implant does not. One of ordinary skill in the art would not consider the fusion implant of Cottle to be a joint prosthesis as claimed. As Applicant states in paragraph [0003] of the published application, "[u]nlike cervical joint prostheses, cages are used for immovably fixed connection of adjacent vertebral bodies for the purposes of their fusion."

In accordance with the above, and in order to expedite allowance, the claims have been amended to require that the prosthesis comprise a core which forms an articular joint. This aspect of the invention is neither disclosed nor suggested by Cottle, since the fusion implant disclosed by Cottle by its nature has no portion that can form an articular joint.

Accordingly, since Cottle does not disclose all of the elements of claims 2, 3, 6, 9 and 11, the anticipation rejections should be withdrawn. The obviousness rejections all rely on the Examiner's reading of Cottle in support of the anticipation rejections and should be withdrawn because Cottle does not provide the teachings for which it is cited.

In view of the above, early action allowing claims 2, 3, 5, 6 and 9-13 is solicited.

In the event the Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472008500**.

Dated: November 16, 2009

Respectfully submitted,

By Bradley J. Meier
Bradley J. Meier
Registration No.: 44,236

Morrison & Foerster LLP
1650 Tysons Blvd, Suite 400
McLean, Virginia 22102
Telephone: (703) 760-7700
Facsimile: (703) 760-7777